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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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ROBIN L. SYKES,

) Case No. ED CV 12-1171 JCG

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Plaintiff,

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v.

) **MEMORANDUM OPINION AND
ORDER**

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CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,^{1/}

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Defendant.

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Robin Sykes (“Plaintiff”) challenges the Social Security Commissioner’s decision denying her applications for disability and supplemental security benefits. Specifically, Plaintiff contends, among other things, that the decision of the Administrative Law Judge (“ALJ”) was not supported by substantial evidence because it did not account for the medical evidence presented to the Appeals Council after the issuance of the ALJ’s decision. (Joint Stip. at 4-8, 18-19.) The Court agrees with Plaintiff for the reasons stated below.

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^{1/} Carolyn W. Colvin is substituted as the proper defendant herein. *See* Fed. R. Civ. P. 25(d).

1 A. The District Court must Consider the Record as a Whole, Including
2 Newly Admitted Evidence

3 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s final
4 decision to determine if: (1) the Commissioner’s findings are supported by
5 substantial evidence, and (2) the Commissioner used correct legal standards. *See*
6 *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008);
7 *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is
8 “such relevant evidence as a reasonable mind might accept as adequate to support a
9 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted).
10 To determine whether substantial evidence supports a finding, the reviewing court
11 “must review the administrative record as a whole, weighing both the evidence that
12 supports and the evidence that detracts from the Commissioner’s conclusion.”
13 *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998).

14 Moreover, when the Appeals Council “considers new evidence in deciding
15 whether to review a decision of the ALJ, that evidence becomes part of the
16 administrative record, which the district court must consider when reviewing the
17 Commissioner’s final decision for substantial evidence.” *Taylor v. Comm’r of Soc.*
18 *Sec. Admin.*, 659 F.3d 1228, 1232 (9th Cir. 2011). When the Appeals Council
19 declines review, the ALJ’s decision becomes the final decision of the Commissioner,
20 and the district court reviews that decision for substantial evidence based on the
21 record as a whole. *Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1161-62
22 (9th Cir. 2012).

23 B. The ALJ’s Decision Was Not Supported by Substantial Evidence

24 Here, the ALJ found that Plaintiff was not disabled based upon the medical
25 record as it existed at the time of the hearing. Specifically, the ALJ considered
26 records from the California Department of Corrections for the period in which
27 Plaintiff was on parole, as well as state agency reports and the findings of the
28 consultative psychiatrist. (AR at 31-32.) The ALJ gave the most weight to the

1 conclusions of the consultative examiner, who found that Plaintiff exhibited a
2 depressed and anxious mood but was otherwise normal. (*Id.* at 32, 262-68.) The
3 ALJ adopted the consultative examiner’s diagnosis of borderline personality
4 disorder and found that Plaintiff had the residual functional capacity to perform her
5 past work as a housekeeper. (*Id.* at 28, 33, 267.)

6 The ALJ ignored the records from Plaintiff’s inpatient drug treatment at Cedar
7 House Rehabilitation Center. Although sparse, these records support a diagnosis of
8 bipolar disorder and document Plaintiff’s long history of mental instability. (*Id.* at
9 234, 235, 324.) Moreover, as noted by the ALJ, records from the Arrowhead
10 Regional Medical Center further support a diagnosis of bipolar disorder with
11 psychotic features. (*Id.* at 238, 240, 245, 250, 252, 320.)

12 More vital to the outcome of Plaintiff’s applications are the records submitted
13 to the Appeals Council following the ALJ’s decision. (*Id.* at 3-7); *Taylor*, 659 F.3d
14 at 1232 (Court may consider such evidence in deciding whether the ALJ’s decision
15 was supported by substantial evidence). This newly submitted evidence brings
16 Plaintiff’s mental health impairment into sharper focus and details the extent of her
17 psychiatric limitations. In particular, a Mental Disorder Questionnaire Form
18 completed by Romeo Villar, M.D., reveals a diagnosis of “Schizoaffective Disorder,
19 Bipolar Type” and “Posttraumatic Stress Disorder.” (*Id.* at 335.) Dr. Villar further
20 reported that Plaintiff has had a long history of mental disturbances; that she is
21 “*learning* how to take care of her basic daily living skills; and has limitations in her
22 social functioning, concentration and task completion, and adaptation to work or
23 work-like situations.” (*Id.* at 333-35 (emphasis added).)

24 Because the ALJ’s decision did not consider this new evidence, the Court
25 finds that the decision denying benefits was not supported by substantial evidence.

26 C. Remand is Warranted


27 With error established, this Court has discretion to remand or reverse and
28 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no

1 useful purpose would be served by further proceedings, or where the record has been
2 fully developed, it is appropriate to exercise this discretion to direct an immediate
3 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
4 But where there are outstanding issues that must be resolved before a determination
5 can be made, or it is not clear from the record that the ALJ would be required to find
6 a plaintiff disabled if all the evidence were properly evaluated, remand is
7 appropriate. *See id.* at 594.

8 Here, the ALJ must be given an opportunity to consider Plaintiff's claim in
9 light of the newly presented evidence. Therefore, on remand, the ALJ shall
10 reevaluate Plaintiff's application in light of the medical evidence as a whole,
11 including the evidence newly submitted to the Appeals Council.

12 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
13 **REVERSING** the decision of the Commissioner denying benefits and
14 **REMANDING** the matter for further administrative action consistent with this
15 decision.^{2/}

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17 Dated: August 26, 2013

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21 Hon. Jay C. Gandhi
22 United States Magistrate Judge
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28 ^{2/} In light of the Court's remand instructions, it is unnecessary to address
Plaintiff's remaining contentions. (*See Joint Stip.* at 5-15, 20-22.)